

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
THE DISTRICT OF MASSACHUSETTS
CHIEF JUSTICE
MR. MARK L. WOLF
ROOM #5110
JOHN JOSEPH MOAKLEY
U.S. COURTHOUSE
1 COURTHOUSE WAY
BOSTON MASS. 02210

2007 SEP -6 A 11:12

U.S. DISTRICT COURT
DISTRICT OF MASS.

DOCKETED

MR. EDWARD TAVARES JR
N.C.C.I. GARDNER
P.O. BOX 466
500 COLONY RD.
GARDNER MASS. 01440

IN RE: EDWARD TAVARES JR PETITIONER V. STEVEN O'BRIEN RESPONDENT
U.S. (WORCESTER) CIVIL DOCKET CASE #-4;04-CV-40059-FDS

Dear Justice Wolf;

This is a complaint, against Judge Magistrate Hillman and of process, proceedings of Worcester U.S. Civil Docket in the above entitled matter, pursuant to the petitioner Edward Tavares Jr. Writ of Habeas Corpus 28 U.S.C.A. 2254-2255, filed under the above docket entry, U.S. NO. WORCESTER CIVIL CASE #4;04-CV-40059-FDS:

The petitioner believe he is being prejudice by the Federal Court to treat his petition expeditious, Because he filed pro-se 28 U.S.C.A. 2254-2255; 2) because the petitioner pro-se is a state prisoner and is not entitled to an expeditious hearing or decision pursuant to his pro-se 28 U.S.C.A. 2254-2255, Writ of Habeas Corpus, or ; 3) because the pro-se state prisoner has genuine issue's for relief, pursuant to his pro-se petition 28 U.S.C.A. 2254-2255., but because the petitioner is pro-se and a state prisoner, there will be a long delay. The petitioner prays this court will overseers this case, in the interest of justice and fairness.

PROCEDURAL MATTERS:

The petitioner has been appointed for the third time in this petition 28 U.S.C.A. 2254-2255, been referred to 3 different U.S. Judge's pursuant to petition in the above entitled matter. The first Judge was Nathaniel M. Gorton ; Second Judge was Charles S. Swartwood who on March 11/2005 , ordered that petitioner has fully

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(2)

exhausted all claims in the state's highest court, and denied the respondent motion for court order to petitioner to amend petition to only include exhausted claims(Docket no.12)was denied.Justice Swartwood also ordered respondent to file an answer no later than April 15/2005.All papers were submitted in June of 2005.In December 2/2005(Docket no.24 petitioner filed a motion for scheduled hearing on his petition 28 U.S.C.A.2254-2255, and was denied,"Stating the court will decide case on written submission of the parties,"C/C Roland Lisa,See EXH-A Docket entry sheet.


The petitioner received notice that his petition has been referred to Magistrate Timothy S.Hillman upon his newly appointed to the bench of the United States District Court.Petitioner receive notice on February 16/2006,but the court retroactively change the appointed date to February 15/2005,SEE EXH-B One year prior to judge appointment.

The petitioner on March 7/2007 ,newly appointed Judge Magistrate Hillman was appointed to petitioner petition,it was over three years from filing,Justice Hillman report recommendations which now come a further delay and further prejudice to the petitioner, based on Hillman J.report was not independently review of the petitioner petition 28 U.S.C.A.2254-2255,Also at the time the petitioner filed his 28 U.S.C.A.2254-2255,he had not knowingly known that he has cancer,and the respondent in January 2007,respondent's doctor's told the petitioner that he has nine months to live based on their statistic,that the petitioner has lung cancer for 4 years,and now has spread to his pelvis lower pubic bone's,also may have pancreatic cancer.

The petitioner on March 13/2007 filed an objection against Justice Hillman recommendation,because it seems that Judge Magistrate Hillman erroneously written report is not based on independent review,but falsely written,about trial evidence of this case.SEE attached petitioner objection,which will explain this complaint and why Mr.Tavares pro-se state prisoner is entitled to De Novo Review independently review on the merit's of his petition 28 U.S.C.A.2254-2255.The state court's decision denying Tavares relief of claims involving the ineffective assistance of counsel;Conflict of Interest and inconsistent conclusion,should be reviewed De Novo,because there was no adjudication on the merit's of Federal Claims,also decision on petitioner 28 U.S.C.A.2254-2255 should be expeditiously decide because of his medical conditions cancer.

The petitioner direct this court's attention to his objection filed on March 13/2007,and he beg's this honorable judge to give petitioner equal justice and fairness in the Federal Court's.

All the above said is true and further signed under the pains and penalties of perjury on this 31 day of August 2007:

SINCERELY YOURS

 MR.EDWARD TAVARES JR
 N.C.C.I.GARDNER
 P.O.BOX 466
 500 COLONY RD.
 GARDNER MASS.01440

HABEAS

**United States District Court
District of Massachusetts (Worcester)
CIVIL DOCKET FOR CASE #: 4:04-cv-40059-NMG
Internal Use Only**

EXH-A

Tavares v. Commonwealth of Massachusetts
Assigned to: Judge Nathaniel M. Gorton
Referred to:
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:2254 Petition for Writ of Habeas Corpus
(State)

Date Filed: 04/26/04
Jury Demand: None
Nature of Suit: 530 Habeas
Corpus (General)
Jurisdiction: U.S. Government
Defendant

Petitioner

Edward Tavares, Jr.

represented by **Edward Tavares, Jr.**
NCCI, Gardner
500 Colony Road
PO Box 466
Gardner, MA 01440
PRO SE

V.

Respondent

**Commonwealth of
Massachusetts**

represented by **Daniel I. Smulow**
Attorney General's Office
One Ashburton Place
18th Floor
Boston, MA 02108
617-727-2200
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Email:
daniel.smulow@ago.state.ma.us

ATTORNEY TO BE NOTICED

Filing Date	#	Docket Text
04/26/2004	<u>1</u>	PETITION for Writ of Habeas Corpus \$ 5, receipt number 404302, filed by Edward Tavares Jr.. (Attachments: # <u>1</u> Part 2# <u>2</u> Part 3# <u>3</u> Exhibit)(Jones, Sherry) (Entered: 04/26/2004)
04/26/2004	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Edward Tavares Jr.(Jones, Sherry) (Entered: 04/26/2004)
04/26/2004	<u>2</u>	Judge Nathaniel M. Gorton : Electronic ORDER entered finding as moot <u>2</u> Motion for Leave to Proceed in forma pauperis. "MOOT, by the court." (cc/cl) (Jones, Sherry) (Entered: 04/26/2004)
04/28/2004	<u>3</u>	Judge Nathaniel M. Gorton : ORDER entered SERVICE ORDER re 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rcpt of this order. (cc/cl)(Castles, Martin) (Entered: 04/28/2004)
05/18/2004	<u>4</u>	MOTION for Order to petitioner to submit petition in compliance with 28 u.s.c. S. 2254 Rule 2(c) by Commonwealth of Massachusetts.(Smulow, Daniel) Additional attachment(s) added on 5/19/2004 (Jones, Sherry). (Entered: 05/18/2004)
05/18/2004	<u>5</u>	MEMORANDUM OF LAW by Commonwealth of Massachusetts to <u>4</u> MOTION for Order to petitioner to submit petition in compliance with 28 u.s.c. S. 2254 Rule 2 (c). (Attachments: # <u>1</u> attached case)(Smulow, Daniel) Additional attachment(s) added on 5/19/2004 (Jones, Sherry).). Modified on 5/19/2004 (Jones, Sherry). (Entered: 05/18/2004)
05/19/2004	<u>5</u>	Return receipt received for mail sent to Attorney General, Comm MA Delivered on 4/29/04 (Hassett, Kathy) (Entered: 05/19/2004)

		09/22/2004)
10/22/2004	<u>11</u>	MOTION for Order to Set Date for Response to Habeas Corpus Petition by Steven O'Brien.(Smulow, Daniel) (Entered: 10/22/2004)
10/22/2004		Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>11</u> Motion for Order. Response due 11/22/04. (cc/cl) (Castles, Martin) (Entered: 10/22/2004)

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11/10/2004 10:07:42			
PACER Login:	ag0009	Client Code:	tavares
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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NOTICE

EXH - B

Please take notice that the civil action cases on the attached list, previously referred to Magistrate Judge Charles B. Swartwood III are now referred to Magistrate Judge Timothy S. Hillman upon his appointment to the bench of this Court.

All inquiries regarding matters before Magistrate Judge Hillman should be directed to Lisa Roland at 508-929-9905.

SARAH ALLISON THORNTON
Clerk of Court

By: /s/Deborah F. Shattuck
Division Manager

Date: February 15, 2005

Copies to: Counsel